

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN JOSEPH SIMMONS,  
Petitioner,  
v.  
PEOPLE OF THE STATE OF  
CALIFORNIA,  
Respondent.

No. 2:21-cv-1033 AC P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The initial petition in this case, which was styled as a notice of removal, was filed on June 8, 2021, when petitioner was incarcerated at High Desert State Prison. ECF No. 1. The petition was dismissed with leave to amend because it did not state any cognizable claims for relief and it was unclear whether petitioner was seeking to bring a civil action, challenge an ongoing criminal proceeding in the Lassen County Superior Court, or challenge a previous conviction from the Los Angeles County Superior Court. ECF No. 6. Petitioner proceeded to file a document styled as objections to the magistrate judge's findings and recommendations, though the grounds for objection are unclear. ECF No. 8. He then filed first and second amended petitions. ECF Nos. 9,

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1                   Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts  
 2 (Habeas Rules) requires the court to summarily dismiss a habeas petition, “[i]f it plainly appears  
 3 from the petition and any attached exhibits that the petitioner is not entitled to relief in the district  
 4 court.” As set forth below, the petition is successive and therefore barred.

5                   Though largely incomprehensible, the second amended complaint appears to challenge  
 6 petitioner’s 1987 convictions for kidnapping, rape, attempted robbery, and assault with a deadly  
 7 weapon on a peace officer issued by the Los Angeles County Superior Court in case A917709.  
 8 ECF No. 11 at 2, 233. Pursuant to 28 U.S.C § 2241(d), courts in both the district of conviction  
 9 and the district of confinement have concurrent jurisdiction over applications for habeas corpus  
 10 filed by state prisoners. Since petitioner was incarcerated in within the boundaries of the Eastern  
 11 District of California when he initiated this petition, this court has jurisdiction. However, the  
 12 district of conviction is typically favored for petitions challenging a petitioner’s conviction  
 13 because all witnesses and evidence necessary for the resolution of the application are more  
 14 readily available in that district. See Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 499  
 15 n.15 (1973). While the court has the authority to transfer this matter to the Central District of  
 16 California, it declines to do so in this instance because the petition is clearly successive.

17                   Under 28 U.S.C. § 2244(b)(3)(A), a second or successive application for habeas relief  
 18 may not be filed in district court without prior authorization by the court of appeals. Felker v.  
 19 Turpin, 518 U.S. 651, 657 (1996). Prior authorization is a jurisdictional requisite. Burton v.  
 20 Stewart, 549 U.S. 147, 152-53 (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001)  
 21 (once district court has recognized a petition as second or successive pursuant to § 2244(b), it  
 22 lacks jurisdiction to consider the merits). A petition is successive within the meaning of 28  
 23 U.S.C. § 2244(b) where it “seeks to add a new ground for relief” or “if it attacks the federal  
 24 court’s previous resolution of a claim *on the merits.*” Gonzalez v. Crosby, 545 U.S. 524, 532  
 25 (2005) (emphasis in original). “[A] ‘claim’ as used in § 2244(b) is an asserted federal basis for  
 26 relief from a state court’s judgment of conviction.” Id. at 530. “Even if a petitioner can  
 27 demonstrate that he qualifies for one of [the] exceptions [to filing a second or successive  
 28 petition], he must seek authorization from the court of appeals before filing his new petition with

1 the district court.” Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008) (citing 28 U.S.C.  
2 § 2244(b)(3)).

3 Review of the records for the United States District Court for the Central District of  
4 California reveals that petitioner has previously filed an application for a writ of habeas corpus  
5 attacking the conviction and sentence challenged in this case. The previous application was  
6 denied on the merits on July 14, 1999. Simmons v. Hill, No. 2:96-cv-2174 TJH CW (C.D. Cal.),  
7 ECF Nos. 29 (report and recommendation), 34 (order adopting report and recommendations), 35  
8 (judgment). This court takes judicial notice of the record in that proceeding. See United States  
9 ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)  
10 (court “may take notice of proceedings in other courts, both within and without the federal  
11 judicial system, if those proceedings have a direct relation to matters at issue.” (citations  
12 omitted)); Fed. R. Evid. 201(b)(2) (court may take judicial notice of facts that are capable of  
13 accurate determination by sources whose accuracy cannot reasonably be questioned).

14 Before petitioner can proceed on his claims, he must submit a request to the United States  
15 Court of Appeals for the Ninth Circuit to issue an order authorizing the district court to consider  
16 the application and that request must be granted. 28 U.S.C. § 2244(b)(3). Petitioner has not  
17 provided any evidence that he has received the required authorization. The undersigned will  
18 therefore recommend that this action be dismissed without prejudice to re-filing once petitioner  
19 receives authorization to proceed from the Ninth Circuit.

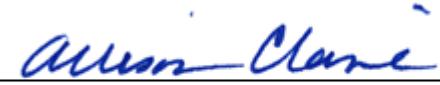
20 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly  
21 assign a United States District Judge to this action.

22 IT IS FURTHER RECOMMENDED that this action be DISMISSED without prejudice as  
23 second or successive.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
26 after being served with these findings and recommendations, petitioner may file written  
27 objections with the court. The document should be captioned “Objections to Magistrate Judge’s  
28 Findings and Recommendations.” If petitioner files objections, he shall also address whether a

1 certificate of appealability should issue and, if so, why and as to which issues. See 28 U.S.C.  
2 § 2253(c)(2). Petitioner is advised that failure to file objections within the specified time may  
3 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
4 1991).

5 DATED: October 18, 2022

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7 ALLISON CLAIRE  
8 UNITED STATES MAGISTRATE JUDGE

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